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2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Case No. 08-13555 (JMP)

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7 In the Matter of:

8  
9 LEHMAN BROTHERS HOLDINGS INC., et al.

10  
11 Debtors.

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13 - - - - -x

14 United States Bankruptcy Court  
15 One Bowling Green  
16 New York, New York  
17

18 August 4, 2010

19 10:03 AM  
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21 B E F O R E:  
22 HON. JAMES M. PECK  
23 U.S. BANKRUPTCY JUDGE  
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HEARING re Debtors' Seventeenth Omnibus Objection to Claims  
(Settled Derivative Claims)

HEARING re Debtors' Eighteenth Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Nineteenth Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twentieth Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twenty-First Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twenty-Second Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twenty-Third Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twenty-Fourth Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

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HEARING re Debtors' Twenty-Fifth Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twenty-Sixth Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

HEARING re Debtors' Twenty-Seventh Omnibus Objection to Claims  
(Duplicative of Indenture Trustee Claims)

Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Let's proceed.

3 MS. ECKOLS: Good morning, Your Honor. Erin Eckols  
4 with Weil Gotshal for the debtors. I will be covering the  
5 agenda items 1 through 11 today. That is debtors' seventeenth  
6 through twenty-seventh omnibus objection to claims. I did want  
7 to notify the Court of a couple of changes to the agenda since  
8 it was filed. State Street Trust and Banking Company has  
9 withdrawn its objection to the eighteenth, nineteenth and  
10 twenty-seventh omnibus objections. So those items are agenda  
11 items 2(b), 3(b) and 11(b) that we won't be taking up today  
12 'cause they've been resolved.

13 THE COURT: Is that simply a withdrawal and an  
14 acceptance of the form of order proposed by the debtor or is  
15 there some agreement with respect to language for the order to  
16 satisfy the objection?

17 MS. ECKOLS: No, sir. They filed a notice -- they  
18 sent us a notice of withdrawal, a formal one, for us to submit  
19 to the Court. This --

20 THE COURT: Is there any understanding with respect to  
21 the language of the order --

22 MS. ECKOLS: No.

23 THE COURT: -- as it relates to the objection?

24 MS. ECKOLS: No, sir.

25 THE COURT: Okay.

1 MS. ECKOLS: They requested no changes.

2 I'm going to start with a general discussion of the  
3 omnibus objections on the agenda today and then proceed with  
4 the specific discussion regarding some issues related thereto.  
5 As I mentioned, we are covering debtors' seventeenth through  
6 twenty-seventh omnibus objections today. On May 28th, debtors  
7 filed the seventeenth omnibus objection on settled derivative  
8 claims. There were eighty-five claims on this objection and it  
9 requested the reduction and an allowance of those claims  
10 because the parties had already reached an agreement regarding  
11 the amount. And so -- of those claims. And so the objection  
12 was to conform the proofs of claim and the claim amounts to  
13 what was in those agreements.

14 There were a few formal inquiries but there were no  
15 objections so we are proceeding on an uncontested basis today  
16 with respect to the seventeenth omnibus objection.

17 On June 17th, the debtors filed omnibus objections 18  
18 through 27. These are the omnibus objections that we refer to  
19 as duplicative of indenture trustee claims. There were  
20 6,620 -- excuse me -- 3,620 total claims on these objections.  
21 And these omnibus objections are seeking to expunge claims  
22 filed by individual holders of securities that are in substance  
23 duplicative of the global claims filed by the applicable  
24 indenture trustee, as Wilmington Trust or Bank of New York  
25 Mellon, on behalf of the holders of those same securities. In

1 other words, the indenture trustee and the individual claimants  
2 are seeking to recover from the debtors on the same obligation,  
3 for example, principal and interest on the note, with respect  
4 to a particular security as identified with a CUSIP number.

5 We believe these omnis are appropriate 'cause, as a  
6 general matter, debtors should not be required to pay on the  
7 same claim more than once, and these omnibus objections, by  
8 eliminating redundant claims, will help avoid the possibility  
9 of multiple or duplicative recoveries.

10 Moreover, as set forth in the omnibus objections, the  
11 indenture trustee was the proper party to file a claim on  
12 behalf of the holders of those securities issued under the  
13 indentures. Thus we believe the global claims of the indenture  
14 trustees are the appropriate vehicle for those claims being  
15 resolved.

16 Just briefly, as is set forth in the objection and as  
17 this Court is aware, the bar date order specifically allowed  
18 indenture trustees, such as Wilmington Trust and Bank of New  
19 York Mellon, to file such global claims. The terms of the  
20 applicable indentures allow the indenture trustees to file such  
21 a global proof of claim and the Bankruptcy Rule procedure 3003  
22 also states that an indenture trustee may file such a claim.

23 I wanted to give Your Honor a -- to discuss the  
24 methodology that debtors used to put together these particular  
25 omnibus objections. Our claims agent, Epiq, initially

1 performed a manual search of claims to identify those that were  
2 claiming for a particular CUSIP or ISIN number, it's basically  
3 trying to identify claims that were asserting a claim based on  
4 a security. Alvarez & Marsal then took the results of that  
5 manual search by Epiq and identified claims for the duplicative  
6 of the indenture trustee objections using a multi-set and very  
7 thorough process. Alvarez & Marsal did a claim by claim review  
8 of those claims that were identified by Epiq in what I'm going  
9 to call the preliminary pool and they used the information on  
10 the claim as well as debtors' books and records to determine  
11 what specific security the individual claimant was claiming  
12 for. Once the securities on the individual claims were  
13 identified, those were cross-referenced with the securities on  
14 the respective indenture trustee claim. Claims that were for  
15 securities that matched to securities on the Wilmington Trust  
16 or Bank of New York Mellon's claims, again using a CUSIP or  
17 ISIN number, were flagged for potential objection. A&M then  
18 provided the initial list of claims for objection to the  
19 debtors. They -- already been claims that have been reviewed  
20 on an individual basis by Alvarez & Marsal.

21 Debtors then performed a check of fifty percent of  
22 those claims that have been identified for objection by Alvarez  
23 & Marsal. The methodology employed by debtors to identify  
24 duplicative claims, we believe, was both logical and  
25 reasonable. Wilmington Trust and Bank of New York Mellon

1 specifically identified in their global claims exactly what  
2 securities were covered by those claims and they did so by  
3 CUSIP number. Individual claimants also frequently provided  
4 CUSIP or ISIN number of the notes that the claim was based on,  
5 how they frequently identified them on the basis of the claim.  
6 Thus, we believe that using CUSIP numbers were the best way for  
7 debtors to identify claims for these omnibus objections.

8 The holders of the 3,620 claims that received  
9 individual -- received an individualized notice at significant  
10 expense to debtors in informing them of the objection. The  
11 notice promptly set forth a specific attorney for the debtors  
12 that the claimant can contact with questions or concerns  
13 including if a claimant believed that his claim should not be  
14 subject to those omnibus objections.

15 Debtors received inquiries or objections on behalf of  
16 approximately 345 claimants. We wanted to provide the  
17 claimants with as much information as possible so that they  
18 could determine how to proceed with respect to the omnibus  
19 objections if they wanted to object. So not only did we make  
20 our -- debtors make themselves available to discuss the  
21 objections with the claimant and answer their questions, we  
22 also informed them how they could check -- that they didn't  
23 just have to rely on debtors' word for this, that they could  
24 check it themselves by looking at the Wilmington Trust or Bank  
25 of New York Mellon claim and seeing if their CUSIP was on there

1 and assessing if they believed that was adequate.

2 We then also coordinated with Wilmington Trust and  
3 Bank of New York Mellon and they specifically designated  
4 attorneys, specific point people, that debtors can refer  
5 claimants to, to answer specific questions regarding the scope  
6 of the Wilmington Trust or Bank of New York Mellon claim. So  
7 that way, if the claimant wanted to hear it from the horse's  
8 mouth, we gave them the information for them to be able to do  
9 that.

10 That's -- again, we believe that we provided --  
11 debtors undertook extraordinary efforts to try to give  
12 claimants the information that they needed to assess these  
13 objections. And we do want to -- the debtors very much  
14 appreciate the coordination with Wilmington Trust and Bank of  
15 New York Mellon in making their specific attorneys available to  
16 claimants. That was a great help.

17 And as this Court is aware, Wilmington Trust and Bank  
18 of New York Mellon filed the limited objections to omnibus  
19 objections 18 and 27 that I will discuss in detail later --  
20 'cause they're unique issues --

21 (Pause)

22 THE COURT: Sorry about that. I have no idea if  
23 CourtCall listeners are hearing this. But we'll proceed  
24 anyway.

25 MS. ECKOLS: Okay. Thank you, Your Honor. Putting



1 aside the Wilmington Trust and Bank of New York Mellon  
2 objections for the moment, debtors received nineteen formal  
3 objections, counting by docket entries, from eighteen claimants  
4 for those omnibus objections. Eight of those formal objections  
5 have been resolved; four have been adjourned. Thus, debtors  
6 will be proceeding with respect to seven formal objections from  
7 claimants today as well as the Wilmington Trust and Bank of New  
8 York Mellon objections.

9 The debtors have taken steps to address the concerns  
10 raised by Wilmington Trust and Bank of New York Mellon in their  
11 objections. Briefly, the Wilmington Trust and Bank of New York  
12 Mellon objections expressed concern that the omnibus objections  
13 may inadvertently capture claims that are not duplicative in  
14 whole or in part of the indenture trustee claims. The UCC also  
15 expressed similar concerns. In an effort to address those  
16 concerns, debtors have already conducted a claim-by-claim  
17 review of the 1,280 claims subject to those omnis that are  
18 equal to or greater than a hundred thousand dollars. Debtors  
19 believe that those claims presented -- those higher dollar  
20 claims presented the greatest risk of having such an issue  
21 because they were more likely to be claiming multiple -- on the  
22 basis of multiple securities.

23 Also, at the request of the UCC, debtors have agreed  
24 to conduct an additional review of every single claim on omnis  
25 18 through 27 that is less than a hundred thousand dollars.

1 This additional review will cover the 2,340 claims left over  
2 and again will be a significant additional expense for debtors.  
3 In the event that claims that aren't identified that are in  
4 whole or in part not duplicative of the indenture trustee  
5 claims, debtors will address those issues by either withdrawing  
6 their objection or modifying it to only expunge a specific  
7 portion of that claim.

8 Today the debtors are requesting that the Court grant  
9 omnibus objections 18 through 27 over the objections going  
10 forward today. The debtors will not submit the final orders to  
11 the Court until the additional review that debtors have agreed  
12 to undertake is completed as we have informed the creditors'  
13 committee, Wilmington Trust and Bank of New York Mellon.

14 Unless Your Honor has questions at this point, I will  
15 proceed to the specific omnibus objections.

16 THE COURT: No. You're certainly free to proceed, but  
17 I want to be clear on something. The intention of the omnibus  
18 objections which are substantially identical to each other is  
19 to eliminate duplication where an individual claimant has filed  
20 a claim for a particular security that is the subject of the  
21 proof of claim filed by the respective indenture trustees,  
22 correct?

23 MS. ECKOLS: Correct.

24 THE COURT: In the event that this ongoing diligence  
25 that you describe either for claims greater than a hundred

1 thousand or less than a hundred thousand fails to identify a  
2 certain random claimant that happens to have a claim embedded  
3 in its proof of claim, that it is not a duplicative claim.  
4 Assuming my intention that nobody's proper claim unrelated to  
5 the indenture trustee claims will be lost as a result of what  
6 I'll call human error in the process of diligence -- diligence  
7 in this, the purpose of this is to avoid duplicates not to  
8 inadvertently cross out valid claims, correct?

9 MS. ECKOLS: Correct. And that is certainly -- we are  
10 not intending or seeking to expunge claims that are  
11 nonduplicative of the indenture trustee although, as you noted,  
12 human error can occur. Unfortunately, although we do our best,  
13 claims processing is somewhat of an imperfect process. But  
14 again, it is not our intention to expunge a claim --

15 THE COURT: And it's not my intention in entering any  
16 order to inadvertently expunge a claim that has been somehow  
17 missed that is not within the category of a duplicative claim.  
18 Although if there's an injustice as a result of a mistake,  
19 we'll find a way to correct it later --

20 MS. ECKOLS: Okay, Your Honor.

21 THE COURT: -- assuming somebody brings it to my  
22 attention.

23 MS. ECKOLS: And we are hopeful that by providing -- I  
24 feel confident that by providing the individualized notice to  
25 the claimants that -- again, we've done our best. But we

1 expect them to let us know if they believe that there is an  
2 error. And we believe it's incumbent upon them to come forward  
3 and reach out to us which we've made it incredibly easy to do  
4 if they believe that there is an issue.

5 I do want to raise a particular point 'cause I feel  
6 it's -- perhaps that this -- a good juncture to do this. It  
7 appears as though there may be a disagreement between the  
8 debtors and the indenture trustees regarding what exactly is a  
9 claim that is duplicative of the indenture trustee claims. So  
10 we do have an interpretation issue that I can discuss with the  
11 Court. Specifically, Bank of New York Mellon -- the indenture  
12 trustees have raised the issue of a claimant asserting a claim  
13 that would otherwise be duplicative of the indenture trustee  
14 claim if it's for a note, principal interest, but it's  
15 asserting a priority that is different from the priority  
16 asserted in the indenture trustee claims. For example, someone  
17 deci -- one individual who checked that their claim was secured  
18 although, quite frankly, it's not. Or that their claim was  
19 entitled to priority although, again, we don't believe that is  
20 correct. Debtors' position is that the omnibus objections are  
21 to expunge claims that are, in substance, duplicative of the  
22 indenture trustee claims. And regardless of what priority the  
23 claimant actually claims, in substance, those claims -- again,  
24 whether they check secured or priority, are, in effect, seeking  
25 to recover for the same thing that the Wilmington Trust or the

1 Bank of New York Mellon claims are seeking to recover.

2 So that is the issue currently on the table. And if  
3 you'd like me to continue or if you'd like to hear from the  
4 indenture trustees on this particular issue --

5 THE COURT: Rather than parse out that issue  
6 separately now, I think I'd like to hear from them all at once  
7 with respect to their objections. And I'm confused about the  
8 withdrawal of the Wilmington Trust Company objections you  
9 referred to at the outset of the hearing. What objection was  
10 withdrawn?

11 MS. ECKOLS: The State Street.

12 THE COURT: Oh, State Street. I'm sorry.

13 MS. ECKOLS: State Street.

14 THE COURT: I misunderstood you.

15 MS. ECKOLS: I may have misspoke. So, Your Honor, at  
16 this point, would you prefer that I go ahead and continue  
17 through the omnibus objections putting the Wilmington Trust and  
18 Bank of New York Mellon issues aside for the moment?

19 THE COURT: I'd like to hear those issues all at once.

20 MS. ECKOLS: Okay. Well, I believe that at this  
21 point, then, I will turn over the podium to Wilmington Trust.

22 MS. JOHNSTON: Thank you. Your Honor, Susan Johnston  
23 from Covington & Burling on behalf of Wilmington Trust. We  
24 appreciate the debtors' undertaking to review all of the claims  
25 to be sure that there are no claims that are not related to the

1 indentures and to deal with them separately. There's one  
2 issue, as debtor indicated, that is still open between us. And  
3 that is our concern that some of the claimants have asserted a  
4 different priority from the Wilmington Trust global claim.  
5 We're not aware of any basis on which a different priority  
6 would be appropriate. But the notice of claim objection that  
7 we've seen does not refer to an objection based on priority.  
8 It is limited to an objection based on duplication.

9 So we are concerned -- there is a difference of  
10 opinion between Wilmington Trust and the debtor about whether  
11 the existing notice gave proper notice that the debtor would be  
12 disallowing claims that assert a different priority even if  
13 they arise under the indenture.

14 THE COURT: Let me understand something. There's no  
15 question as to the adequacy of notice to the individual holders  
16 of claims that there would be a disallowance of duplicate  
17 claims.

18 MS. JOHNSTON: Correct.

19 THE COURT: Presumably, a claimant in receipt of an  
20 omnibus objection that has asserted a priority within the claim  
21 or, for whatever reason, has listed this as a secured claim,  
22 this same claimant might have an apparent prima facie right to  
23 recovery other than an unsecured claim, would be in a position  
24 to express his or her or its views to the debtor and say, wait  
25 a minute, I don't want my claim expunged because I think I'm

1 entitled to a priority distribution. Isn't there that notice  
2 here?

3 MS. JOHNSTON: Your Honor, yes. And at least two of  
4 the creditors have done that. There are two objections that  
5 are responses to the objection, Mr. Ebbert's and the Senior  
6 Civil Liberties Association that have raised with the debtor  
7 and with the Court their claim for a different priority.

8 The concern that we have, Your Honor, is that over  
9 the -- since the cases were filed nearly two years ago, we've  
10 had conversations with about 2,000 of the noteholders. We've  
11 had conversations with about 200 since the omnibus claims  
12 objections were filed. Most of the people that we've spoken  
13 with have been relatively unsophisticated people that would  
14 appear in this court pro se. Their comprehension of this  
15 process is limited. They are not sophisticated. And it is not  
16 clear to us that they fully understand the nature of the notice  
17 that they've been given. The notice that we've seen simply  
18 refers to a claim that is duplicative of the Wilmington Trust  
19 claim. The Wilmington Trust claim was filed as an unsecured  
20 claim. We are concerned that some of these people may think  
21 that my claim is a priority claim so it's not being expunged.  
22 They may just misunderstand. And we're worried that  
23 overlooking that issue now will create administrative problems  
24 for the Court later. And what we would like for the debtor to  
25 do is since they're going to be looking at the claims anyway to

1 ensure that none contain nonindenture claims, we would like for  
2 them also to identify any claims that identify themselves as  
3 priority or secured and deal with them separately, take them  
4 out of these objections and file a separate objection on the  
5 basis of both duplicative and incorrect priority. We think  
6 that's the simplest -- I mean, I know it involves a lot of  
7 work, but they're going to be looking at the claims anyway. We  
8 think that is the cleanest way to deal with this problem to  
9 avoid future problems and to ensure that the notice is  
10 adequate.

11 Your Honor is obviously correct. They've all gotten a  
12 notice. And if they had questions about it they could have  
13 raised it. But we're assuming a lot of knowledge about basic  
14 bankruptcy on behalf of people who've never been in this  
15 situation before. And I certainly wouldn't want to -- I  
16 wouldn't assume that they understood especially because it  
17 didn't say anything about priority. The notice doesn't say  
18 priority.

19 So that's my concern that I have. And I think, as I  
20 said, Your Honor, that since they're going --

21 THE COURT: Is that the only current concern?

22 MS. JOHNSTON: That is the only current concern, Your  
23 Honor. And we are -- I am prepared to say that we obviously  
24 have no objections to the elimination of true duplicative  
25 claims. We have -- we agree that all of the responses have



1       been filed except for these two with respect to the priority  
2       and secured issue are, in fact, covered by our claim are  
3       duplicative and can be expunged. We very much appreciate the  
4       debtors' undertaking to look at the claims to ensure that there  
5       are no nonduplicative claims. And all we're asking now, Your  
6       Honor, is that in the course of that review, they also identify  
7       claims that incorrectly list improper priority or security  
8       assertions and deal with those separately so that people get  
9       proper notice. We think there's a -- our consensual difference  
10      with the debtor is that we don't think a notice that says your  
11      claim will be expunged because it's duplicative also gives  
12      adequate notice that the claim will be expunged because it had  
13      an improper priority assertion.

14               THE COURT: I understand your position although it  
15      carries with it incremental administrative expenses to the  
16      estate and a level of further work on this that almost takes  
17      away from the benefit of having indenture trustees file global  
18      claims in the first place. It makes this process  
19      extraordinarily burdensome, it seems to me. And the issue that  
20      you raise is so nuanced and I'm not prepared to say I agree  
21      with it at all. I believe that notice of expungement of the  
22      duplicative claim carries with it notice that the individual  
23      claim that I have filed is going to disappear. And I am going  
24      to be relegated to the indenture trustee claim that applies to  
25      the same security, unless I do something to object, it's pretty

1 clear to me. And I think even people who are unsophisticated  
2 in the bankruptcy practice reading plain language would know if  
3 I don't do something, I'll have whatever claim the trustee has  
4 provided for me.

5 So I hear what you're saying. I'm just not that  
6 sympathetic to it.

7 MS. JOHNSTON: All right.

8 THE COURT: Is Bank of New York taking the same  
9 position? Maybe I'll -- maybe through repetition, I'll get the  
10 point.

11 MR. REID: Good morning, Your Honor. Russell Reid  
12 with Sheppard Mullin Richter & Hampton on behalf of the Bank of  
13 New York Mellon. We, likewise, appreciate the debtors'  
14 efforts. We recognize this is a voluminous process. And we  
15 certainly appreciate their recent commitment to review all of  
16 the 3,620 claims.

17 I think Your Honor, earlier this morning, hit the nail  
18 on the head when you acknowledged that to the extent that there  
19 is an unintended nonduplicative claim embedded in one of those  
20 three thousand claims, there's certainly a way that the Court  
21 and the debtors can address that problem and if it's brought to  
22 their attention I think that this can, frankly, be settled with  
23 respect to language in the order which is very clear that the  
24 only thing that's intended here, which I think we all  
25 acknowledge, is the expungement of duplicative claims under the

1 indenture trustee umbrellas. And to the extent that a claimant  
2 feels that there is some portion of their claim, in whole or in  
3 part, that's not related to that, that that can be taken up  
4 with the debtors in some appropriate fashion. I think we can  
5 carve an order that satisfies both of our concerns that is  
6 expedient with respect to getting rid of the duplicative claims  
7 but, by the same token, acknowledges this issue that there  
8 could be, by virtue of human error or oversight or whatever,  
9 some type of claims that are still out there that are embedded  
10 in these proofs of claims that should be administered by the  
11 Court. And I think this can be addressed in the order. I  
12 don't think we have to necessarily agree to disagree with  
13 respect to philosophied nuance. I think there's language that,  
14 among all of us, we could come up with in the order that would  
15 address this issue.

16 THE COURT: Okay. But do you or don't you take the  
17 same position as Wilmington Trust Company with respect to the  
18 priority or classification of the claim relating to the same  
19 security as being, in effect, nonduplicative? I mean, this is  
20 definitional.

21 MR. REID: Correct.

22 THE COURT: Is a duplicative claim a claim, how ever  
23 it may be styled, that relates to the same security and the  
24 same CUSIP number or is a duplicative claim a claim of the same  
25 sort as that filed by the indenture trustee? Because, in

1 effect, that's the definitional question raised by Wilmington  
2 Trust in its objection. Either you subscribe to that or you  
3 say we can deal with it with language in the order. I'm not  
4 sure what you're saying.

5 MR. REID: We concur with Wilmington Trust's position,  
6 frankly, with respect to that, yet, at the same time, believe  
7 that we can deal -- that they could be addressed satisfactorily  
8 in the order.

9 THE COURT: Okay. That seems to me to be an order  
10 that's going to be tough to draft as you describe it because if  
11 there's a fundamental philosophical disagreement between the  
12 debtors and the indenture trustees as to what constitutes a  
13 duplicative claim, I don't think you're going to be able to  
14 draft around that.

15 MR. REID: Well, I agree to the extent that we  
16 continue to have this philosophical difference. That being  
17 said, from a practical standpoint, Your Honor, I don't think  
18 that we're inviting legions of people to come forward and make  
19 this a much more burdensome process. I think that we could be  
20 over-encompassing perhaps from the debtors' perspective with  
21 respect to what we invite in this order. And I would hope that  
22 we could come up with agreeable language. Perhaps we can't.  
23 But if we could, I think that it is possible to meet in the  
24 middle for purposes of the order. But I don't believe, from a  
25 pragmatic or a realistic standpoint that we are going to be

1 seeing thousands of people coming forward thinking they have  
2 some type of nuanced different claim. I think we protect  
3 ourselves and the Court from that possibility with an  
4 appropriate order but I don't think that we'll be adding  
5 excessive burdensome work to the estate.

6 THE COURT: Okay. I understand the position of both  
7 indenture trustees.

8 MR. REID: Thank you, Your Honor.

9 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank  
10 Tweed Hadley & McCloy on behalf of the official committee.  
11 Your Honor, the committee, separate from the indenture  
12 trustees, did weigh in on the initial issue here in terms of  
13 whether there should be a subsequent review to determine  
14 whether there are claims out there that should not be included  
15 or portions of claims. It did not weigh in on this most recent  
16 issue so we don't -- we're not taking a position on the nuanced  
17 issue that we're now seeking to address.

18 THE COURT: Okay.

19 MS. ECKOLS: Your Honor, I believe that the  
20 philosophical differences between the parties have become clear  
21 so I'm not going to rehash that. I did want to note that  
22 although debtors have undertaken and agreed to review claim by  
23 claim the 2600 additional claims what Bank of New York and  
24 Wilmington Trust are requesting is that debtors would also need  
25 to go back and rereview the 1,280 claims that we have already

1 reviewed on a claim-by-claim basis to see if there are any of  
2 these philosoph -- claims that raise this philosophical  
3 difference between the parties. As we've indicated, we believe  
4 that whether or not a claim has asserted a different priority  
5 that it is, in substance, duplicative of the indenture trustee  
6 claims.

7 In respect, obviously, debtors do believe that the  
8 individualized notice was adequate. And although we understand  
9 that there are concerns regarding whether pro se individuals  
10 could understand that notice, that is one of the reasons why we  
11 do put in bold, big type, a specific attorney for the debtors  
12 that these claimants can reach out to. And we know that has  
13 worked and that they understand that they can reach us 'cause  
14 we've received well over 300 -- approximately 345 inquiries  
15 related to these objections. And at that point, I'm going to  
16 move on unless Your Honor has any further questions.

17 THE COURT: I think it's simply time to move on though  
18 we'll probably come back to this point before the hearing is  
19 concluded.

20 MS. ECKOLS: Understood. With respect to agenda item  
21 1, debtors' seventeenth omnibus objection to claims, there were  
22 no formal objections. So we are proceeding on an uncontested  
23 basis. So debtors respectfully request that the Court grant  
24 debtors' seventeenth omnibus objection to claims.

25 THE COURT: I'm granting it with one question,

1       however, as it relates to the continuing objections of  
2       Wilmington Trust and the Bank of New York Mellon. Are there  
3       any what we'll call the philosophical claimant issues that are  
4       embedded in this?

5               MS. ECKOLS: No, Your Honor, not that we are aware of.  
6       These are the omnibus objection on the claims where the parties  
7       have already reached an agreement on the amount.

8               THE COURT: Fine.

9               MS. ECKOLS: Moving on to agenda item 2, omnibus  
10       objection 18, again, putting aside the Wilmington Trust and  
11       Bank of New York Mellon objections, there are three formal  
12       unresolved objections going forward today. The first is that  
13       of Daniel Ebbert. Mr. Ebbert is not a claimant but reached out  
14       to debtors prior to filing his objection to debtors' eighteenth  
15       omnibus objection. I personally spoke with Mr. Ebbert  
16       regarding his objection and provided an explanation as to why  
17       his claim had been objected to. Based on that conversation, we  
18       understand that Mr. Ebbert had already confirmed that the  
19       security he was seeking to recover for under his individual  
20       claim was, in fact, on the Wilmington Trust claim.

21               It is also our understanding that despite Mr. Ebbert  
22       agreeing that a security was on the Wilmington Trust claim that  
23       he would pursue his objection. Debtors followed up with a  
24       letter to Mr. Ebbert enclosing a copy of the debtors'  
25       eighteenth omnibus objection and a copy of the Wilmington Trust

1 claim and set forth the contact information for Wilmington  
2 Trust counsel therein. We asked that Mr. Ebbert contact us if  
3 he decided not to pursue his objection and we've received no  
4 further communication from him and, thus, we are proceeding  
5 with respect to his objection.

6 This is one of the claims that Wilmington Trust raised  
7 as a claimant who had -- was asserting priority on his  
8 individual claim we're seeking to expunge. So it does raise  
9 that issue. But as we mentioned, Mr. Ebbert informed us that  
10 he had confirmed that his note was on the Wilmington Trust  
11 claim. Debtors also confirmed that the note Mr. Ebbert is  
12 seeking is listed on the Wilmington Trust claim and confirmed  
13 directly with Wilmington Trust that that security was on the  
14 Wilmington Trust claim. Accordingly, we believe that Mr.  
15 Ebbert is seeking to recover for the same obligation that  
16 Wilmington Trust is seeking to recover and that the Ebbert  
17 claim is, in substance, duplicative of the Wilmington Trust  
18 claim and thus we believe that Mr. Ebbert's objection to the  
19 debtors' eighteenth omnibus objection should be overruled.

20 We do also next have the objection and response of  
21 Ronald Zemenak. We spoke with Mr. Zemenak prior to his filing  
22 of the objection and we gave him, again, the general  
23 information and how he could access the Wilmington Trust claim  
24 and gave him contact information for Wilmington Trust counsel.

25 That objection that Mr. Zemenak filed indicated that



1 he was not satisfied that the Wilmington Trust claim would  
2 adequately protect his interests and that his son, an attorney,  
3 was advising him on the matter. Therefore, we reached out to  
4 his son. And in e-mail correspondence with him, the son, he  
5 advised that his father understood the nature of the omnibus  
6 objection but wanted to pursue his claim individually and apart  
7 from the Wilmington Trust claim. However, he also stated that  
8 his father would accept it if the Court found that the  
9 Wilmington Trust claim adequately protected his rights.

10 Mr. Zemenak, Sr., the father, contacted us last night  
11 and confirmed that he would be going forward with his objection  
12 this morning.

13 Debtors checked this claim specifically and the  
14 securities Mr. Zemenak are claiming for are all on the  
15 Wilmington Trust claim. We do note that there was actually a  
16 typo on one of the CUSIP numbers that he put in. But again,  
17 we -- it matches up. We also confirmed with Wilmington Trust  
18 that those CUSIP numbers were on the Wilmington Trust claim.  
19 Thus, we believe that the Zemenak claim is duplicative of the  
20 Wilmington Trust indenture claim and that his objection should  
21 be overruled.

22 Next is the objection of the Senior Civil Liberties  
23 Association, Inc. I'm going to refer to this claimant as SCLA  
24 for short. This is not a claimant that reached out to debtors  
25 prior to filing its objection. I personally spoke with Mr.

1 Burr, the representative for SCLA regarding SCLA's objection  
2 and provided an explanation as to why the particular claim had  
3 been objected to. I sent Mr. Burr a copy of the eighteenth  
4 omnibus objection, a copy of the SCLA claim and a copy of the  
5 Wilmington Trust claim so that he could look for himself. I  
6 also provided Mr. Burr with the contact information for  
7 Wilmington Trust counsel and asked that he inform us whether he  
8 wished to pursue his objection. And I did want to note for the  
9 Court that this is the claimant that Wilmington Trust  
10 identified as his individual claim asserting secured status so  
11 it does present this philosophical issue. We did not receive  
12 further communication from Mr. Burr and thus his objection is  
13 going forward today.

14 In the SCLA objection, there is no statement regarding  
15 whether or not SCLA believes that its claim is duplicative of  
16 the Wilmington Trust claim. Thus debtors do not believe that  
17 SCLA is contesting that its claim is, in fact, duplicative of  
18 the Wilmington Trust claim. Moreover, debtors reviewed the  
19 SCLA claim and identified it as claiming for a security with a  
20 CUSIP number covered by the Wilmington Trust claim. We also  
21 had Wilmington Trust confirm that this was the case, that it  
22 was a security on their claim.

23 Accordingly, we believe that SCLA is seeking to  
24 recover for the same obligation that Wilmington Trust is  
25 seeking to recover for and that the SCLA claim is, in

1 substance, duplicative of the Wilmington Trust claim. And  
2 thus, we respectfully request that the Court overrule SCLA's  
3 objection to the debtors' eighteenth omnibus objection.

4 THE COURT: Let me just ask if there's anyone in court  
5 or on the telephone representing the interest of Mr. Ebbert,  
6 Mr. Zemenak or what we're calling the SCLA.

7 MR. ZEMENAK (TELEPHONICALLY): Your Honor -- Your  
8 Honor, this is Ronald P. Zemenak and I am on the phone from  
9 Castle Rock, Colorado.

10 THE COURT: Okay. Is there anything that you wish to  
11 say in reference to the newest position taken by the debtors  
12 with regard to the duplicative nature of the claim that you are  
13 asserting?

14 MR. ZEMENAK: Yes, I do. And I will try to be  
15 succinct. I've somewhat lost confidence in the process because  
16 of the way it's gone forward. In December of '08, I had  
17 received notice of the Lehman bankruptcy and it was indicated  
18 that I had to support all required documentation to submit my  
19 claim, which I did. On June 3rd of '09, I had received  
20 acknowledgment that my claim had been received. Then in July  
21 of '09, I received notice that my claim had to be resubmitted  
22 even though I referenced the acknowledgment that I had received  
23 and I thought that this request for an additional claim  
24 submission was in error.

25 Later, I received notice that I had a duplicative

1 claim and I contacted Epiq Systems and they told me that I had  
2 to make a choice to either stay with my original claim or keep  
3 with the second claim I filed. But I had to write a letter  
4 and -- indicating that I wanted to cancel the duplicative claim  
5 which I was forced to submit and stay with my original claim.

6 Then I received notice after that that a global claim  
7 was being filed on my behalf by Wilmington Trust. However, I  
8 had never received any prior notice directly from Wilmington  
9 Trust that they were going to be acting on my behalf or in what  
10 manner they were going to be acting on my behalf.

11 So, quite frankly, all of this caused me to lose  
12 confidence in the process. And the primary basis for my  
13 objection is that I wish to be certain that my rights to  
14 maximize any settlement due me are protected to the fullest  
15 extent possible. If Your Honor can assure me that I will be in  
16 no better position by yielding to the global claim then I will  
17 do so. As a retiree living on a fixed income, I need to be  
18 sure that by participating in the global claim that I am not in  
19 any way shortchanging myself, and that is, not obtaining the  
20 best dollar settlement possible. And that's the substance of  
21 my objection.

22 THE COURT: Okay. I understand. And I would ask  
23 debtors' counsel and counsel for the indenture trustee to  
24 provide such assurances as can be provided concerning the claim  
25 process.

1 MR. ZEMENAK: And if I may add one thing, Your Honor.  
2 I'm, quite frankly, very perplexed why the first time I have  
3 ever heard that I was going to be represented by Wilmington  
4 Trust in a global claim was with the eighteenth omnibus  
5 objection.

6 THE COURT: Okay. Well, maybe we can provide you with  
7 the information you're seeking now.

8 MR. ZEMENAK: Thank you, sir.

9 MS. ECKOLS: Your Honor, debtors do, in fact, believe  
10 that Mr. Ebbert's would be --

11 THE COURT: Well, this is Mr. Zemenak.

12 MS. ECKOLS: I'm sorry. I'm so sorry. Mr. Zemenak  
13 would be in the same position going it alone or as part of the  
14 Wilmington Trust claim. But again, I believe that there's -- I  
15 don't know that there's necessarily disagreement with the  
16 Wilmington Trust and Bank of New York Mellon -- Wilmington  
17 Trust on this particular issue as this claim does not raise the  
18 philosophical issues.

19 THE COURT: But you mentioned, and I just want to be  
20 clear on this, that there was a typographical error of some  
21 sort. Apparently, the CUSIP number that was used by Mr.  
22 Zemenak in filing his individual proof of claim in contrast  
23 with the CUSIP number that was part of the global claim filed  
24 by Wilmington Trust on behalf of all holders of the issue. I  
25 just want to be clear that there's no inadvertent mistake here.

1 Has sufficient work been done to verify that we're talking  
2 about the same security?

3 MS. ECKOLS: We believe that it has. It appears as  
4 though Mr. Zemenak just left one digit off whatever he was --  
5 writing his objection. He wrote CUSIP number 5259FDMO.  
6 Debtors believe that it is, in fact, 52519FDMO which would give  
7 it the required numbers. And we do believe, based on a review  
8 of his claim and the objection and what we know is on the  
9 Wilmington Trust claim, that it is, in fact, a typo.

10 THE COURT: Okay. And can counsel for Wilmington  
11 Trust provide some assurance on the record both to Mr. Zemenak  
12 and to the Court that the filing by Wilmington Trust Company or  
13 the indenture trustee claim on behalf of the various holders  
14 was sufficient to give Mr. Zemenak the same rights that he  
15 would have in an individual claim regardless of any priority  
16 issues that might be embedded in the claim?

17 MS. JOHNSTON: Yes, Your Honor. Susan Johnston from  
18 Covington & Burling on behalf of Wilmington Trust. Wilmington  
19 Trust is the successor trustee on this indenture. Mr. Zemenak  
20 may not have heard the name Wilmington Trust associated with  
21 this indenture before because the original trustee was  
22 Citibank. And so, it may be that Mr. Zemenak was confused by  
23 an unfamiliar name of an indenture trustee. Wilmington Trust  
24 succeeded to the indenture several months before the petition  
25 was filed. But that's not necessarily something that the

1 noteholders would have heard about in the ordinary course. The  
2 notice went out but I'm not quite sure when because we weren't  
3 representing Wilmington in its capacity as indenture trustee at  
4 that time.

5 So, I believe that there was probably a reference to  
6 Wilmington Trust as the indenture trustee in the bar notice  
7 which indicated that Wilmington Trust was authorized both by  
8 the Court and by the indenture to file a global proof of claim  
9 on behalf of all noteholders. Once Lehman -- once the Lehman  
10 bankruptcy commenced, Wilmington Trust became the fiduciary for  
11 all noteholders and acts on their behalf in securing the  
12 maximum recovery possible for each of them under the notes.  
13 And so, because that is the nature of Wilmington Trust's role  
14 in this case, I am confident that Mr. Zemenak will recover as  
15 much under the global proof of claim as he would be able to  
16 recover under an individual proof of claim.

17 THE COURT: Okay. Thank you very much. Based upon  
18 those statements and an understanding of the proof of claim  
19 process as it relates to securities that are issued under and  
20 subject to the indentures in question, I am satisfied that Mr.  
21 Zemenak and other similarly situated holders are protected to  
22 the fullest extent by the proof of claim filed by the indenture  
23 trustee on behalf of all holders subject to the respective  
24 indentures. So, Mr. Zemenak, I'm going to overrule your  
25 objection but I'm doing so in a manner that I hope you'll find

1 satisfactory based upon what you heard represented on the  
2 record.

3 MR. ZEMENAK: I guess so. I'll certainly accept that  
4 and I do understand that the reason I had pursued this was  
5 because in speaking with other parties along the way, nobody  
6 could give me that assurance. And so, having that come from  
7 you, I certainly understand.

8 THE COURT: Okay. Fine. Thank you very much. And as  
9 to the remainder of the eighteenth omnibus objection, having  
10 heard nothing from anyone on behalf of Mr. Ebbert or the SCLA,  
11 I'm overruling those objections and I'm now granting the  
12 eighteenth omnibus objection as presented.

13 MR. ZEMENAK: And, Your Honor, I do have one  
14 additional comment. And that is, do I need to take any  
15 additional steps in order to be included?

16 THE COURT: No.

17 MR. ZEMENAK: Okay. Then, with your permission, I  
18 will end this call.

19 THE COURT: That's fine. You have my permission to  
20 hang up.

21 MR. ZEMENAK: Thank you.

22 MS. ECKOLS: Thank you, Your Honor. Moving on to  
23 agenda item 3, which is debtors' nineteenth omnibus objection  
24 to claims, there is only one formal unresolved objection going  
25 forward, again, putting aside Wilmington Trust and Bank of New



1 York Mellon. That is the opposition of Maheswora Baidya. I  
2 know I've mangled that name. The debtors request that the  
3 Court overrule Mr. Baidya's opposition to expungement of his  
4 claim numbers 3229 and 3330 under the nineteenth omnibus  
5 objection. Mr. Baidya's objection is on the -- objections are  
6 on the basis that he had not authorized anyone, meaning  
7 Wilmington Trust, to file a claim on his behalf and that his  
8 claim was, in fact, a valid claim.

9 After a lengthy discussion with Mr. Baidya regarding  
10 the omnibus objection and his response thereto, I e-mailed him  
11 a copy of the omnibus objection, a copy of the Wilmington Trust  
12 claim and the contact information for Wilmington Trust counsel.  
13 Mr. Baidya informed me via e-mail that he would pursue his  
14 opposition to debtors' nineteenth omnibus objection because he  
15 could not "understand how they can legitimize their objection  
16 to the -- investors' claim for their investments".

17 In the e-mail, Mr. Baidya did not make a statement  
18 regarding whether or not he believed that his claim was or was  
19 not duplicative of the Wilmington Trust claim. The debtors  
20 specifically reviewed Mr. Baidya's claims and identified the  
21 securities that he is seeking to recover for as being on the  
22 Wilmington Trust claim. The debtors have also confirmed  
23 directly with Wilmington Trust that Mr. Baidya's securities are  
24 on the Wilmington Trust claim rendering Mr. Baidya's individual  
25 claims duplicative of that indenture trustee claim.

1 Accordingly, we request that the Court overrule Mr. Baidya's  
2 objection to the expungement of his claims and grant the  
3 nineteenth omnibus objection.

4 THE COURT: Is there anyone in court or on the  
5 telephone representing the interest of Mr. Baidya? I don't  
6 hear anything and I overrule the opposition to the expungement  
7 of that claim as a duplicative claim. Notwithstanding the  
8 statement that there was no direct authorization given to the  
9 indenture trustee under the applicable documents which I have  
10 reviewed, the indenture trustee has the obligation, as well as  
11 the ability, to file global proofs of claim and has done so in  
12 this instance. And so, that objection is overruled. The  
13 nineteenth omnibus objection is granted.

14 MS. ECKOLS: Thank you, Your Honor. With respect to  
15 agenda item number 4, that is debtors' twentieth omnibus  
16 objection to claims, putting aside the Wilmington Trust and  
17 Bank of New York Mellon objections, there are no unresolved  
18 formal objections going forward today and thus we request that  
19 the Court grant the twentieth omnibus objection.

20 THE COURT: The objection is granted subject to  
21 discussion that we'll have at the end concerning how best to  
22 deal with the philosophical issues that are still before us.

23 MS. ECKOLS: Thank you, Your Honor. And with respect  
24 to agenda item number 5, debtors' omnibus objection 21, there  
25 are no unresolved formal objections for this particular omnibus

1 objection, again, putting aside the Wilmington Trust and Bank  
2 of New York Mellon issues. And thus, we would request that the  
3 Court grant the debtors' twenty-first omnibus objection to  
4 claims.

5 THE COURT: The twenty-first omnibus objection to  
6 claims is granted.

7 MS. ECKOLS: Thank you, Your Honor. With respect to  
8 agenda item 6, debtors' omnibus objection -- twenty-second  
9 omnibus objection to claims, again, putting aside the  
10 Wilmington Trust and Bank of New York Mellon objections, there  
11 are no unresolved formal objections for this particular omnibus  
12 objection and, therefore, we respectfully request that the  
13 Court grant it.

14 THE COURT: The twenty-second omnibus objection to  
15 claims is granted.

16 MS. ECKOLS: With respect to agenda item number 7,  
17 debtors' twenty-third omnibus objection to claims, again,  
18 putting aside the Wilmington Trust and Bank of New York Mellon  
19 objections, there are no unresolved formal objections going  
20 forward today on that omni and, thus, we respectfully request  
21 that the Court grant debtors' twenty-third omnibus objection.

22 THE COURT: The twenty-third omnibus objection to  
23 claims is granted.

24 MS. ECKOLS: And agenda item number 8, omnibus  
25 objection 24, again, putting aside the Wilmington Trust and

1 Bank of New York Mellon objections, there are no unresolved  
2 formal objections for this particular omnibus objection and,  
3 thus, we respectfully request that the Court grant debtors'  
4 twenty-fourth omnibus objection to claims.

5 THE COURT: The twenty-fourth omnibus objection to  
6 claims is granted.

7 MS. ECKOLS: Excuse me. With respect to agenda item  
8 number 9, omnibus objection 25, there are no unresolved formal  
9 objections for this particular omnibus objection. There is one  
10 informal objection that we received that we would like to raise  
11 with the Court. It is an objection from Phyllis Dua. It has  
12 not appeared on the docket and thus we do not believe it has  
13 been submitted to the Court. In an abundance of caution,  
14 however, we wanted to bring it to Your Honor's attention. We  
15 do believe that the objection should be overruled.

16 Debtors spoke with Ms. Dua on June 19th and provided  
17 her a general explanation of the notice that she received  
18 advising her that her claim, 6601, had been objected to. So  
19 this is a claimant who received the individualized notice and  
20 reached out to us. We provided Ms. Dua information regarding  
21 how she can obtain a copy of the Wilmington Trust claim so she  
22 can look at it herself and judge it and as well as contact  
23 information for Wilmington Trust counsel should she have any  
24 questions.

25 A few days after that conversation, we received a

1 letter from Ms. Dua stating that she objected to the  
2 disallowance and expungement of her claim. In her objection,  
3 Ms. Dua makes no reference with respect to whether or not her  
4 claim, 6601, is duplicative of the Wilmington Trust claim.  
5 Instead, her objection states that she should be paid on her  
6 claim due to her financial circumstances and that it's a valid  
7 claim.

8 We tried to contact Ms. Dua several times after  
9 receiving her letter objection but could not reach her. We  
10 subsequently sent Ms. Dua a letter containing the information  
11 we had previously verbally provided her regarding accessing the  
12 Wilmington Trust claim and providing the contact information  
13 for Wilmington Trust counsel again. We also included a copy of  
14 the objection as well as information regarding the date, time  
15 and location of the hearing. In the letter to Ms. Dua, we  
16 requested that she inform us if she intended to proceed with  
17 her objection. We received no response from her.

18 Debtors specifically reviewed Ms. Dua's claim and  
19 confirmed that the security Ms. Dua is seeking to recover for  
20 is listed on the Wilmington Trust claim. We also confirmed  
21 with Wilmington Trust directly that the security Ms. Dua is  
22 claiming for is on that Wilmington Trust claim. So  
23 accordingly, we request that the Court overrule Ms. Dua's  
24 objection.

25 THE COURT: Thanks for that explanation. And the

1 informal objection of Phyllis Dua is overruled and the twenty-  
2 fifth omnibus objection to claims is granted.

3 MS. ECKOLS: Thank you, Your Honor. Agenda item  
4 number 10, debtors' twenty-sixth omnibus objection to claims,  
5 putting aside Wilmington Trust and Bank of New York Mellon,  
6 there are no unresolved formal objections for this particular  
7 omni and, thus, we respectfully request that the Court grant  
8 debtors' twenty-sixth omnibus objection to claims.

9 THE COURT: The twenty-sixth omnibus objection to  
10 claims is granted.

11 MS. ECKOLS: Moving on to agenda item number 11, which  
12 is omnibus objection 27, putting aside Wilmington Trust and  
13 Bank of New York Mellon, there is one unresolved formal  
14 objection to discuss as well as one informal objection that we  
15 would like to raise with the Court and to make him aware of it.  
16 It is an objection that we received via letter. It has not hit  
17 the docket but in an abundance of caution, like Ms. Dua, we  
18 wanted to discuss it with Your Honor.

19 Taking up the objections of Ms. Pugia, Ms. Pugia did  
20 not contact us prior to filing her objection. The basis of her  
21 objection is that her claim is valid and financial  
22 circumstances should permit her claim to be paid. There is a  
23 misstatement that her claim is -- or is not duplicative of the  
24 respective Bank of New York Mellon claim.

25 We did speak with Mr. Pugia, Ms. Pugia's husband, as

1 he is handling the objection on behalf of his wife. We  
2 explained the objection. And Mr. Pugia stated -- indicated  
3 that they intended to proceed with the objection because it's a  
4 lot of money. We followed up with a letter reiterating that --  
5 what we had told Mr. Pugia including how to access the Bank of  
6 New York Mellon claim and the contact information for Bank of  
7 New York Mellon counsel and this letter was directed to Mrs.  
8 Pugia as the claimant. And we asked that Ms. Pugia advise us  
9 if she changed her mind and we have received no further  
10 communication from her. Thus, we are moving forward with her  
11 objection this morning.

12 We reviewed Ms. Pugia's claim and the security that  
13 she is claiming for is, in fact, on the Bank of New York Mellon  
14 claim. We did reach out to Bank of New York Mellon claim (sic)  
15 and they have not disagreed that that claim is on the Bank  
16 of -- oh, that security is on the Bank of New York Mellon  
17 claim. Thus, we believe that the Pugia claim is, in fact,  
18 duplicative of the Bank of New York Mellon global claim and  
19 that that objection should be overruled.

20 THE COURT: The objection of Annetta Pugia is  
21 overruled based on the representation that the security that is  
22 the subject of her individual claim is included in the global  
23 proof of claim filed by Bank of New York Mellon.

24 MS. ECKOLS: Thank you, Your Honor. Taking --

25 THE COURT: And the twenty-seventh omnibus objection

1 to claims is granted.

2 MS. ECKOLS: Thank you, Your Honor. Unless your Court  
3 feels otherwise, I was going to discuss the informal objection  
4 to omnibus objection 27 that I had mentioned.

5 THE COURT: Oh. I didn't know there was another.  
6 Okay.

7 MS. ECKOLS: That's okay. It's the informal objection  
8 that didn't show up on the docket so it's not on the agenda.  
9 But I wanted to make you aware of it.

10 That is from Metzler Investment GMBH. It's regarding  
11 claim 63413. I'm just going to refer to it as Metzler for  
12 short. Metzler had filed three separate claims, two of which  
13 showed up on omnibus objection 23. That's the Wilmington  
14 Trust -- duplicative of the Wilmington Trust indenture claim.  
15 They didn't object to that. Their third claim, claim 63413,  
16 was objected to on the twenty-seventh omnibus objection as  
17 duplicative of the Bank of New York Mellon indenture trustee  
18 claim.

19 The correspondence that we received from Metzler was  
20 that they had no record of claims -- that them filing claim  
21 63413 at all and thus they had to object to its expungement.  
22 We then sent Metzler a copy of that claim, 63413, which is very  
23 clearly signed by someone on behalf of Metzler and stamped by  
24 them. And then, in subsequent e-mail correspondence with them,  
25 provided the information related to -- explaining what the



1 claim is, giving them the Bank of New York Mellon information,  
2 telling them how they can get the claim. We, in fact, sent  
3 them the claim, the objection -- the full copy of the  
4 objection, and the surviving Bank of New York Mellon claim.  
5 And it is our understanding that they are persisting with their  
6 objection. Again, we've checked this particular claim. We've  
7 checked the security number, the CUSIP number. It's on the  
8 Bank of New York Mellon claim. So we -- we did check with Bank  
9 of New York Mellon or raised this claim with them and we have  
10 not -- they have not told us that the claim is not on the Bank  
11 of New York Mellon claim.

12 That was a poorly constructed sentence.

13 THE COURT: Is it on the Bank of New York Mellon  
14 global claim?

15 MS. ECKOLS: Yes.

16 THE COURT: Fine. On that basis, the Metzler informal  
17 objection, which is not on the docket but which has been  
18 described, is overruled and I'll repeat what I said earlier.  
19 The twenty-seventh omnibus objection to claims is granted.

20 MS. ECKOLS: And, Your Honor, at this point, we  
21 actually have covered all the agenda items that are going  
22 forward today and thus are just left with the outstanding issue  
23 of Wilmington Trust and Bank of New York Mellon.

24 THE COURT: Okay. I guess one of the questions that I  
25 have about that is whether, as suggested by counsel for Bank of

1 New York Mellon, this is a matter that can be productively  
2 resolved through drafting or whether or not this is something  
3 that requires guidance from the Court if we can effectively  
4 work on an order.

5 MS. JOHNSTON: Your Honor, this is Susan Johnston on  
6 behalf of Wilmington Trust again. May I raise one small issue  
7 before I answer that, before I get to that?

8 THE COURT: Sure.

9 MS. JOHNSTON: It occurred to me, in the course of the  
10 prior discussion, that it might actually be fairly easy for  
11 Epiq to search for all claims that had been denominated secured  
12 or priority with the CUSIP numbers. That is, it might not  
13 require an attorney examination because if they -- if the  
14 claimants, in fact, denominated their claims as secured or  
15 priority, they would have checked the box in the front of the  
16 claim number -- the claim -- proof of claim and Epiq would have  
17 that registered in their database. So that, I don't exactly  
18 know how difficult it is for Epiq to do that but it's got to be  
19 a lot easier than having lawyers do it. If Your Honor was  
20 willing to cons -- in other words, if the issue was  
21 administrative inconvenience for the debtor and if that was a  
22 relatively easy thing to do, that might be one way of dealing  
23 with it. And I'll put that aside -- that thought aside.  
24 Perhaps if the debtor wants to think about it and address the  
25 language issue.

1 We had proposed language in our objection that was  
2 intended to deal with the nonindenture trustee claim issue.  
3 And that language included a reference to priority that is it  
4 indicated that their objection was not intended to expunge any  
5 claim that was -- that did not arise under the indenture and  
6 have the same priority that the indenture had. The debtors'  
7 response to that was that it was unworkable because it left  
8 them not knowing what claims survived and what claims were  
9 expunged.

10 It seems to me that if the debtor is now going to  
11 actually look at the claims to exclude all nonindenture claims,  
12 and we're only left with the priority issue, that it would be  
13 easier either to do the Epiq search that I just suggested or  
14 have Your Honor rule on whether or not you agreed with our  
15 interpretation of that initial proof of claim.

16 My suspicion is that there are not many of them  
17 because only two creditors filed responses to these multiple  
18 omnibus objections and that an Epiq search might reveal that  
19 there are none other than the two that were identified. I  
20 don't know. But that, as a practical matter, my thought was  
21 that the Epiq search might be the best way to do it if it can  
22 be done feasibly.

23 THE COURT: Well, that's a question that I think maybe  
24 can be answered but it doesn't really get to the fundamental  
25 issue that's presented by the Wilmington Trust and Bank of New

1 York Mellon objections which, as it relates to these omnibus  
2 objections, may be manageable. But in terms of further claims  
3 management issues, may raise other questions as to adequacy of  
4 notice in various omnibus objections that have been lodged to  
5 date or that may be lodged in the future.

6 I have some thoughts about it. One thought is that  
7 notice that a claim is going to be expunged is sufficient  
8 notice, assuming that we're talking about people who can read  
9 and write English, that they would lose their rights as an  
10 individual claimant, whatever they may be, as reflected in  
11 their individual proofs of claim unless action is taken. That  
12 notice goes to the priority of the claim being asserted.

13 On the other hand, I also recognize, if we can parse  
14 this very closely, that the actual notice given was notice that  
15 claims duplicative of the indenture trustee claims were the  
16 claims that were going to be expunged. Because there's a lack  
17 of pure symmetry between the indenture trustee claims and those  
18 individual claims asserting a priority at a higher level,  
19 whether it's a secured claim or an administrative claim or some  
20 kind of priority claim, in fact, some claimant might conclude,  
21 simply by doing overlapping Venn diagrams, that, well, maybe I  
22 still have an ongoing priority claim because it's not precisely  
23 duplicative.

24 So I think that what we have here is an administrative  
25 problem regardless of language used. For the avoidance of

1 doubt, as lawyers like to say, I think it would be a good idea  
2 to give additional notice to any of the parties who are the  
3 subject of the current omnibus motions relating to duplicative  
4 claims that the duplicative claim objection extends to priority  
5 differences between the individual claim and the global proofs  
6 of claim filed by Bank of New York Mellon and Wilmington Trust  
7 Company.

8 In saying that, I do not mean to suggest that I agree  
9 that the notice given was inadequate. I think the notice given  
10 was adequate for reasons that I've said already in the record.  
11 But on the theory that more notice is never a bad thing, and in  
12 the hope that the administrative burden is relatively moderate,  
13 I think it's probably a good thing to do in order to avoid what  
14 may turn out to be problems down the road of somebody coming in  
15 and saying I didn't actually have notice that the priority of  
16 my claim is going to be affected by this.

17 Now, those are my comments. It's not exactly a ruling  
18 as much as a statement of my current mental perception of this  
19 problem. On the one hand, I would like this to be as efficient  
20 a process as possible and one that minimizes unnecessary  
21 administrative expense to the estate. On the other hand, I'm  
22 actually benefitted by the comments that were made earlier by  
23 the pro se claimant who was on the phone and who was expressing  
24 some confusion and concern. Mr. Zemenak, who spoke as a  
25 layman, indicated that he wasn't even sure what Wilmington

1 Trust Company was doing in respect of his security claims. And  
2 that, to me, suggests that there may be other confusion out  
3 there. Because it is possible for a thoughtful person, and  
4 this is a little bit like taking a College Board exam. Every  
5 once in a while, you look at a couple of answers and you can  
6 overlogic it. And if you overlogic the answer to a logic  
7 question, you can say, well, my claim maybe isn't expunged  
8 because it actually isn't duplicative because it's claiming a  
9 higher priority. To the extent there's anyone out there that  
10 smart, we should give them actual notice that the claim is  
11 going to be expunged.

12 MS. JOHNSTON: And, Your Honor, it does seem that that  
13 notice could be limited to the people who identified their  
14 claims as priority or secured. There's no --

15 THE COURT: Absolutely. This is not intended to be  
16 global matters. This is only intended to be particularized  
17 notice to those claimants who have asserted priority status or  
18 a status of the amount of a general unsecured creditor.

19 Now, in doing this, I don't mean to invite what  
20 amounts to the next wave of objections to claims which I'm  
21 assuming will be to those unsecured claims that hadn't properly  
22 classified themselves as priority claims or claims in a higher  
23 category of distribution status. This is intended, however, to  
24 be limited to duplicative claims so they know that they're gone  
25 for all purposes and otherwise covered by the indenture trustee

1 claims. I'm not suggesting that we take out of order a series  
2 of claims objections that may be due in the future.

3 MS. ECKOLS: And, Your Honor, in the future, we  
4 actually will be filing more duplicative and indenture trustee  
5 objections. So this is incredibly instructive.

6 The debtors will undertake the renoticing that you  
7 suggested with respect to claimants on omnibus objections 18  
8 through 27 to assert a different priority status than the  
9 Wilmington Trust claim using the Epiq methodology that  
10 Wilmington Trust suggested.

11 THE COURT: That's fine. Is there anything more with  
12 respect to the claims docket?

13 MS. ECKOLS: Not that I'm aware of, sir.

14 THE COURT: Fine. I understand that there has been a  
15 request for a chambers conference as it relates to the fee  
16 committee. And we're going to clear the courtroom -- we're  
17 going to use the courtroom as the place for that chambers  
18 conference to take place because I understand some people are  
19 going to want to dial in and the telephone system in the  
20 courtroom is best. So we're going to take a -- call it a ten-  
21 minute recess. People who are not to remain for purposes of  
22 that chambers conference are excused. We'll also clear a line  
23 and people who need to call in solely for the chambers  
24 conference will have an opportunity to do that. So we'll take  
25 a ten-minute recess. We're adjourned till then.

1 (Whereupon these proceedings were concluded at 11:16 a.m.)  
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I N D E X

R U L I N G S

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Debtors' twenty-sixth omnibus objection to claims sustained	46	3

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R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET\*\*D-486)

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Date: August 5, 2010